IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3463 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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JAVAHARLAL B MEHTA & ORS. - Petitioner(s)
Versus
STATE OF GUAJRAT & ANR. - Respondent(s)

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Appearance :
Shri C.H. Vora for Petitioner(s) : 1 - 5.
Shri M.R. Mengdey, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

ORAL JUDGMENT

Present is a Writ Application under Article 227 of the Constitution of India seeking quashing of the order dated 15th

September, 1990 passed in Case No.SRD/LND/R/113/84 whereunder in exercise of *suo motu* powers, the revisional authority had cancelled the order dated 7th November, 1983 passed by the Collector in Case No.54/83-84.

2. The short facts necessary for disposal of the present Writ Application are that the petitioners claimed to be the owners of New Survey No.36 (consisting of Old Survey Nos.692, 693, 694, 710 and 711), admeasuring 13 Acres and 32 Gunthas. However, at the time of measurement, due to some inadvertence or wrong on the part of the authority, the area was measured as 15 Acres and 26 Gunthas. On 30th September, 1983, the Deputy Collector regularised the total area admeasuring 15 Acres and 26 Gunthas in favour of the petitioners and necessary Entry No.203 was also made in the revenue records. It appears that thereafter, the petitioners made an application for conversion of the land use for the entire area of 15 Acres and 26 Gunthas. By the order dated 7th November, 1983, the Collector, Kutch granted the desired permission for development of the area for non-agricultural use.

2.1 It appears that the earlier order regularising the additional area in favour of the petitioners was challenged by one Sorathia Gnati Mahajan Trust on the ground that the land belonged to them. The

application was allowed and an inquiry was ordered. Taking advantage of the order, the learned revisional authority issued a notice to show cause to the present petitioners that why the order dated 7th November, 1983 be not taken in *suo motu* revision and be not quashed. The petitioners filed their reply on 15th January, 1986.

2.2 It would also be noteworthy that between the present petitioners and Sorathia Gnati Mahajan Trust, Civil Suit No.43 of 1984 was filed and the same was ultimately compromised on 13th November, 1984 whereunder the petitioners agreed to return and later on, as a fact, returned the excess area of 1 Acre and 34 Gunthas to the said Trust.

2.3 The learned revisional authority, in its revisional order, held that as the permission was granted for 15 Acres and 26 Gunthas, out of which, 1 Acre and 34 Gunthas did not belong to the petitioners, the order was wrong; it, accordingly, set aside the order with liberty in favour of the petitioners to apply afresh for conversion permission.

3. Shri C.H. Vora, learned Counsel for the petitioners, submits that if due to some inadvertence or *bona fide* mistake, 1 Acre and 34 Gunthas of land was included in the petitioners' holding, then, the revisional authority could only set aside the conversion permission in

relation to 1 Acre and 34 Gunthas only and the entire permission could not be set aside. His further submission is that as there is no dispute between the private parties and the petitioners have already returned the land, there would be no need for the petitioners to apply afresh and the permission already accorded in favour of the petitioners can be modified and confined to the extent of 13 Acres and 32 Gunthas.

4. Shri M.R. Mengdey, learned Assistant Government Pleader, for the State, however, submitted that as the permission was *en bloc*, the permission could not be separated and if the petitioners apply afresh, they are not going to suffer any prejudice.

5. After hearing the parties, I am of the opinion that the arguments put forth by Shri C.H. Vora, learned Counsel for the petitioners, must be sustained. If the petitioners are holders of 13 Acres and 32 Gunthas of land and the permission was granted for some additional area, which did not belong to the petitioners, then, the dispute was in relation to the additional area only and not in relation to the area relating to which there were no disputes. When the petitioners have already accepted that 1 Acre and 34 Gunthas land did not belong to them, then, that part of the permission can only be withdrawn and rest of the permission ought to have been maintained. If the permission was

en bloc and simply one, then too, illegal permissions could be counted out and the legal permission in relation to the legal holding of the petitioners could always be maintained.

6. Taking into consideration the totality of the circumstances, I am of the opinion that the petition deserves to and is, accordingly, allowed. It is held that the permission in relation to 13 Acres and 32 Gunthas of New Survey No.36 (Old Survey Nos.692, 693, 694, 710 and 711) shall remain unaltered. Rule is made absolute. No costs.

[R.S.Garg, J.]

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